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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/354,058	07/15/1999	JOHN CRESCENTI	044463.0014	4549

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AKIN GUMP STRAUSS HAUER & FELD  
1900 FROST BANK PLAZA  
816 CONGRESS AVENUE  
AUSTIN, TX 78701

EXAMINER

COLBERT, ELLA

ART UNIT	PAPER NUMBER
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2172

DATE MAILED: 01/17/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

A-G

**Office Action Summary**

Application No.

09/354,058

Applicant(s)

CRESCENTI ET AL.

Examiner

Ella Colbert

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 July 1999.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3 & 4                      6) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US 5,005,122) Griffin et al, hereafter Griffin.

With respect to claim 1, Griffin teaches, a plurality of backup cells in col. 1, lines 41-45 comprising: a backup device executing a backup of the data stored on one of the plurality of groups of network devices in col. 1, lines 34-47, a management component, communicatively coupled to at least one backup device, controlling the backup of the data to the backup device in col. 1, lines 60-66, and each of the plurality of backup cells communicatively coupled to at least one other of the plurality of backup cells, and each of the plurality of backup cells adaptable to be controlled by a management component in another of the plurality of backup cells in col. 2, lines 10-30. Griffin did not explicitly teach, backup cells, but it would have been obvious to one having ordinary skill in the art at the time the invention was made to have backup cells and in view of Griffin's teaching of backup nodes to modify in Griffin because such a modification would allow Griffin's system to have a backup cell instead of a backup node for backing up data stored on magnetic media for the purpose of minimizing the likelihood of data being lost.

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With respect to claim 2, Griffin teaches, the backup device is controllable from the management component in another of the plurality of backup cells in col. 2, lines 51-61.

With respect to claim 3, Griffin teaches, the backup device is controllable from the management component in another of the plurality of backup cells via the management component in the same backup cell as the backup device in col. 2, lines 51-61.

With respect to claim 4, Griffin teaches, a first backup cell in col. 2, lines 9-30 comprising: at least one backup device executing a backup of the data stored on the first group of network devices in col. 1, lines 43-47 and col. 2, lines 50-57; a first manager component, communicatively coupled to at least one backup device, controlling the backup of the data to at least one backup device in col. 2, lines 51-61; a second backup cell communicatively coupled to the first backup cell, the second backup cell in col. 3, lines 21-44 comprising: a second manager component in col. 3, lines 67-68 and col. 4, lines 1-15; and the second manager component controlling the backup of the data to at least one backup device in col. 4, lines 62-68 and col. 5, lines 1-4 and col. 6, lines 43-52. Griffin does not explicitly teach, a backup cell, but it would have been obvious to one having ordinary skill in the art at the time the invention was made to have a backup cell and to modify in Griffin because such a modification would allow Griffin's system to have a backup cell instead of a backup node for backing up data stored on magnetic media for the purpose of minimizing the likelihood of data being lost.

With respect to claim 5, Griffin teaches, the second manager component directly controls the backup of data to at least one backup device in col. 2, lines 51-57.

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With respect to claim 6, Griffin teaches, the second manager component directly controls the backup of data to at least one backup device via the first manager component in col. 3, lines 9-20 and lines 67-68 and col. 4, lines 1-6 and lines 16-23.

With respect to claim 7, Griffin teaches, the network computing system comprising a first network device, where the first manager component is a software module executing on the first device, and the second manager component is a software module in col. 4, lines 62-68 and col. 5, lines 1-4.

With respect to claim 8, Griffin teaches, the network computing system further comprising a second network device, where the second manager component executes on the second network device in col. 6, lines 7-61.

With respect to claim 9, Griffin teaches, the second manager component executes on the first network device in col. 7, lines 13-41.

With respect to claim 10, Griffin teaches, at least one backup device executing backup functions for the data contained on the first group of network devices in col. 7, lines 32-47; and a first management component executing on the first network device, communicatively coupled to at least one backup device, controlling the backup of the data to at least one backup device in col. 4, lines 62-68 and col. 5, lines 1-4. Griffin did not explicitly teach, the second manager component coupled to the first network device, the second manager component controlling the backup of the data to at least one backup device in col. 2, lines 51-57, but it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the

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second manager component coupled to the first network device, the second manager component controlling the backup of the data to at least one backup device in view of Griffin's teachings of providing management and a backup server and to modify in Griffin because such a modification would allow Griffin's system to be relatively cost effective and would permit the communication, the transfer, storage, and backup of data.

With respect to claim 11, this dependent claim is rejected for the similar rationale given for claim 9.

With respect to claim 12, this dependent claim is rejected for the similar rationale given for claim 9.

With respect to claim 13, Griffin teaches, the network computing system comprising a second group of network devices containing data, the second management component controls a backup of the data contained on the second group of network devices in col.6, lines 33-68.

With respect to claim 14, this dependent claim is rejected for the similar rationale given for claim 5.

With respect to claim 15, this dependent claim is rejected for the similar rationale given for claim 6.

With respect to claim 16, Griffin teaches, a backup device executing backup functions for the data contained on the first group of network devices in col. 6, lines 43-52; and a first network device, communicatively coupled to at least one backup device, controlling the backup of the data contained on the first group of network devices to at least one backup device in col. 7, lines

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19-27. Griffin did not explicitly teach, a second network device, communicatively coupled to the first network device, the second network device the second manager component controlling the backup of the data to at least one backup device in col. 7, lines 32-47, but it would have been obvious to one having ordinary skill in the art at the time the invention was made to have a second network device, communicatively coupled to the first network device, the second network device the second manager component controlling the backup of the data to at least one backup device in view of Griffin's teachings of providing management and a backup server and to modify in Griffin because such a modification would allow Griffin's system to be relatively cost effective and would permit the communication, the transfer, storage, and backup of data.

This independent claim is also rejected for the similar rationale given for claims 4 and 10.

With respect to claim 17, this dependent claim is rejected for the similar rationale given for claim 13.

With respect to claim 18, this dependent claim is rejected for the similar rationale given for claim 5.

With respect to claim 19, this dependent claim is rejected for the similar rationale given for claim 6.

### ***Conclusion***

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Minami et al (US 6,212,521) teaches data retrieval in a distributed network.

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Anglin (US 6,260,069) teaches data retrieval in a distributed computing system with server backup.

***Inquiries***

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is (703)308-7064. The examiner can normally be reached Monday through Thursday from 6:30 a.m. to 5:00 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim Vu, can be reached on (703)305-4393.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**Or faxed to:**

(703)746-7238 for After Final or (703)746-7239, for (formal communications intended for entry).

**Or:**

(703)746-7240 (for informal or draft communications, please label

**“PROPOSED” or “DRAFT”).**

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, Virginia., Sixth Floor (Receptionist).



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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group Receptionist whose telephone number is (703)305-3900.

*E. Colbert*

E. Colbert

January 10, 2002

*Kim Vu*

KIM VU  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100